FDI in telecom sector

919. SHRI RAVULA CHANDRA SEKAR REDDY : Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

(a) whether Government have cleared the decks for increasing the limit of foreign direct investment in telecom sector from 49 to 74 per cent;

(b) if so, the details worked out in this regard;

(c) whether Government have addressed the clarifications sought by the stakeholders, including cellular companies and equipment manufacturers before clearing the decks; and

(d) if so, the details thereof?

THE MINISTER OF STATE IN THE MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (DR. SHAKEEL AHMAD): (a) Yes, Sir.

(b) A copy of the Press Note No. 5 (2005 Series) dated 03.11.2005 issued in this regard is given in the Statement (See below).

(c) and (d) Cellular Operators Association of India (COAI) and some of the service providers had made certain suggestions like (a) the composite foreign holding in telecom companies up to 74% ceiling should not include the investments by Indian Banks and Indian Financial Institutions, (b) any punitive action including decision on violation of licence conditions should be triggered after giving a reasonable transition period for correction in the foreign equity status to 74%, (c) remote access should be permitted to approved and recognized network vendors who provide repair and maintenance support through their global base based offshore, (d) resident Person of Indian Origin (PIO) could be considered at par with resident Indian Citizens, etc., for incorporation in the guidelines/notification. The Government considered these suggestions while firming up of the guidelines/notification. The suggestions accepted by the Government have been included in para 1 .A, 1 .G (ix) and 4 of the aforesaid Press Note No. 5.

Statement

Subject: Enhancement of the Foreign Direct Investment ceiling from 49 per cent to 74 per cent in the Telecom sector.

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
Secretariat for Industrial Assistance

PRESS NOTE NO. 5 (2005 SERIES)

1. In pursuance of the Government's commitment to liberalise the FDI regime, it has been decided to enhance the Foreign Direct Investment ceiling from 49 per cent to 74 per cent in certain telecom services [such as Basic, Cellular, Unified Access Services, National/lnternatioanl Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added services], subject to the following conditions:-

A. The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (Flls), Non-Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs), convertible preference shares, proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc., hereinafter referred as FDI, will not exceed 74 per cent. Thus, 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company. Hence, the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company (i.e. foreign direct investment does not exceed 49 per cent and the management is with the Indian owners). It is clarified that proportionate foreign component of such an Indian Company will also be counted towards the ceiling of 74%. However, foreign component in the total holding of Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian' holding. The licensee will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on a half yearly basis.

B. The majority Directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens, enforced through licence agreement. The appointment to these positions from among resident Indian citizens shall be made in consultation with serious Indian investors. Serious investor has been defined below in para G (ii).

C. The Share Holder Agreements (SHA) shall specifically incorporate the condition that majority directors on the Board including Chairman, Managing Director and CEO shall be resident Indian citizens and shall also envisage the conditions of adherence to Licence Agreement.

D. FDI upto 49 per cent will continue to be on automatic route. Foreign Investment Promotion Board (FIPB) approval shall be required for FDI in the licensee company/Indian promoters/ investment companies including their holding companies if it has a bearing on the overall ceiling of 74 per cent. While approving the investment proposals, FIPB shall take note that investment is not coming from unfriendly countries.

E. The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.

F. FDI shall be subject to laws of India and not the laws of the foreign country/countries.

G. Department of Telecommunications (DoT) will enforce the above and the conditions mentioned below through appropriate amendment in licence:-

(i) There shall be a non-obstante clause in the licence which confers powers upon the licensor to cancel the licence under certain defined circumstances.

(ii) In order to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding, such resident Indian promoter shall hold at least 10 per cent equity of the licensee company.

(iii) The Company shall acknowledge compliance with the licence agreement as a part of Memorandum of Association of the Company. Any violation of the licence agreement shall automatically lead to the company being unable to carry on its

business in this regard. The duty to comply with the licence agreement shall also be made a part of Articles of Association.

(iv) Chief Technical Officer (CTO) Chief Finance Officer (CFO) shall be resident Indian Citizens. The Licensor/DoT shall also be empowered to notify key positions to be held by resident Indian citizens.

(v) The Company shall not transfer the following to any person/ place outside India:—

(a) any accounting information relating to subscriber (except for roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature);

(b) user information (except pertaining to foreign subscribers using Indian Operator's network while roaming); and

(c) details of their infrastructure/network diagram except to telecom equipment suppliers/manufacturers who undertake the installation, commissioning etc. of the infrastructure of the licensee company on signing of non-disclosure agreement.

(vi) The company when entering into roaming agreements with service providers outside India must provide, on demand, the list of such users (telephone numbers, in case of foreign subscribers using Indian Operator's network while roaming).

(vii) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign companies, the Indian Company shall endeavour to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.

(viii) No traffic (mobile and landline) from subscribers within India to subscribers within India shall be hauled to any palce outside India.

(ix) No Remote Access (RA) shall be provided to any equipment manufacturer or any other agency outside the country for any maintenance/repair by the licensee. However, RA may be allowed for catastrophic software failure (such as failure to boot up etc.) which would lead to major part of the network becoming

non-functional for a prolonged period, subject to meeting the following conditions:—

(a) An identified Government agency (Intelligence Bureau) will be notified, when RA is to be provided.

(b) Remote Access password is to be enabled for a definite period only and only for access from pre-approved locations of the Original Equipment Manufacturer (OEM) Vendors and only for the equipments specifically under repair/maintenance.

(c) The control of Remote Access *i.e.* activation, transfer of data termination etc. shall be within the country and not at a Remote location, abroad.

(d) The Government agency will be given all support to record the transactions for on-line monitoring.

(e) Any equipment or software that forms part the overall monitoring shall not be permitted to have remote access under any circumstances.

(f) DoT will define appropriately the terms catastrophic software failure, major part of the network, and prolonged period used under this clause.

(x) It shall be open to the Department of Telecommunications to restrict the licensee company from operating in any sensitive area from the national security angle.

(xi) In order to maintain the privacy of voice and data, monitoring shall only be upon authorization by the Union Home Secretary or Home Secretaries of the States/Union Territories.

(xii) For monitoring traffic, the licensee company shall provide blind access of their network and other facilities as well as to books of accounts to the security agencies.

(xiii) In case of not adhering to licence contions envisaged in para G. the licence(s) granted to the company shall be deemed as cancelled and the licensor shall have the right to encash the performance bank guarantee(s) and the licensor shall not be liable for loss of any kind.

2. The conditions at para 1 above shall also be applicable to the existing companies operating telecom service(s) which had the FDI cap of 49 per cent.

3. The relevant provisions of FDI policy for "investment companies", as given in Press Note 2 (2000 series) dated 11.2.2000 issued by department of Industrial Policy and Promotion will no longer be applicable to telecom sector.

4. An initial correction time of 4 months from the date of issue of this notification shall be allowed to the existing licensee companies providing telecom services mentioned in para 1 above for ensuring adherence to the aforesaid conditions. An unconditional compliance to the aforesaid conditions shall be submitted to the licensor within this period.

5. Press Note 15 (1998 series) and Pass Note 2 (2000 series) issued by Department of Industrial Policy & Promotion stand modified to the above extent.

Sd/-

(UMESH KUMAR)

Joint Secretary to the Government of India

No. 9(1)/2002-FC dated 3rd November, 2005

Laying of sub-marine cable

920. SHRI RAVULA CHANDRA SEKAR REDDY : Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

(a) whether the VSNL has commenced cable laying operations of its sub-marine cable system linking Mumbai and other countries;

(b) if so, the progress achieved so far; and

(c) the cost incurred by Government for this purpose?

THE MINISTER OF STATE IN THE MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (DR. SHAKEEL AHMAD) :(a) Sir, VSNL, currently, is not laying any submarine cable system linking Mumbai to other countries.